

ESTTA Tracking number: **ESTTA119928**Filing date: **01/16/2007**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Mr.RonaldM.Creatore		
Entity	Individual	Citizenship	UNITED STATES
Address	P.O. Box 889 Canfield, OH 44446 UNITED STATES		

Correspondence information	Mr. Ronald M. Creatore President HEVUN Diversified Corporation P.O. Box 889 Canfield, OH 44446 UNITED STATES rcreateore@hevun.com Phone:9193607761
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Applicant Information

Application No	76642100	Publication date	01/16/2007
Opposition Filing Date	01/16/2007	Opposition Period Ends	02/15/2007
Applicant	Parker Intangibles LLC 6035 Parkland Blvd. Cleveland, OH 44124 UNITED STATES		

Goods/Services Affected by Opposition

Class 006. First Use: 2004/01/26 First Use In Commerce: 2004/01/26 All goods and services in the class are opposed, namely: METAL FITTINGS AND FLOW COMPONENTS FOR USE IN THE FOOD, BEVERAGE, DAIRY AND PHARMACEUTICAL PROCESSING INDUSTRIES, NAMELY, TUBES, HOSES, PIPES AND TUBE FITTINGS AND COMPONENTS THEREOF, NAMELY CLAMPS, ADAPTERS, STRAINERS, GASKETS, BALL VALVES, CHECK VALVES, BUTTERFLY VALVES AND SIGHT GLASSES
Class 020. First Use: 2004/01/26 First Use In Commerce: 2004/01/26 All goods and services in the class are opposed, namely: PLASTIC AND ELASTOMERIC FLOW COMPONENTS FOR USE IN THE FOOD, BEVERAGE, DAIRY AND PHARMACEUTICAL INDUSTRIES, NAMELY GASKETS AND O-RINGS

Related Proceedings	Ronald M. Creatore, et al., vs. Parker Hannifin; Case #05-CV-1539 in the Common Pleas Court, County of Mahoning, State of Ohio
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Attachments	PLAIN STATEMENT OF PH CASE 01162007.pdf (4 pages)(283053 bytes) 2005-CV-1539 PARKER MAHONING COUNTY.pdf (14 pages)(433485 bytes) 2004-01-0545 PARKER SUMMIT COUNTY.pdf (13 pages)(3742345 bytes)
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Signature	/Ronald M. Creatore/
Name	Mr. Ronald M. Creatore
Date	01/16/2007

STATEMENT IN SUPPORT OF OPPOSITION TO
TRADEMARK FILING SERIAL #76642100

1. Ronald M. Creatore (hereinafter “Creatore”) is the Trustee of the Ronald M. Creatore Living Trust U/A dated October 20, 1994 (hereinafter, the “Trust”), which is the sole shareholder of HEVUN Diversified Corporation (“HEVUN”). Creatore is also the sole shareholder and President of PNH, Inc. (“PNH”). Collectively, Creatore, the Trust, HEVUN and PNH may be referred to as the Plaintiffs.

2. Defendant Parker-Hannifin Corporation (hereinafter “PH”) is an Ohio Corporation in good standing.

3. Girton Oakes & Burger, Inc. (hereinafter, “GO&B”), was an entity engaged in the business of distributing equipment, components (such as stainless steel fittings and valves) and repair parts to producers of food, dairy, beverage and pharmaceutical products.

4. GO&B pledged all of its assets as security against loans provided by Provident Bank—a “Term” loan of \$250,000.00 and a “Revolver” loan of up to \$2,000,000.00 [hereinafter, collectively, the “Loan”].

5. On or about April 23, 2003, PNH purchased the GO&B Loan and all associated rights from Provident Bank. Forty-five [45] minutes after PNH’s purchase of the GO&B Loan, an involuntary bankruptcy petition was filed against GO&B in the Federal Bankruptcy Court, Northern District of Ohio by third parties not associated with PNH.

6. On or about 08/01/2003 the U.S. Bankruptcy Court approved a settlement between the Trustee of the GO&B estate and the Plaintiffs, whereby any rights associated with trade names or trade marks developed at or by GO&B were assigned to the Plaintiffs. The trade names and/or trademarks included, but were not limited to, the “Performance Stainless” trade name, logo and trade dress, all of which were developed by GO&B in 2001 and 2002.

7. Between June and September of 2003, PH met with William Sayavich [“Sayavich”], a former employee of GO&B, and solicited Sayavich to disclose proprietary information which had been owned by GO&B, and which is now owned by Plaintiffs.

8. On September 1, 2003, PH hired Sayavich for the sole purpose of gaining access to the remainder of any proprietary information owned by Plaintiffs which was not already disclosed thereto by Sayavich, including, but not limited to, trade secret information used to unfairly compete with Plaintiffs. PH also purchased from Sayavich the trade dress associated with the “Performance Stainless” name/logo, even though these intangibles were [and are] the property of the Plaintiffs.

9. In November of 2003, the Plaintiffs discovered that PH claimed to have purchased the trade name “Performance Stainless” from Sayavich. HEVUN immediately registered the “Performance Stainless” trade name with the Ohio Secretary of State on 11/22/2004 [see enclosed certificate, which predates the subject Trademark Application], and provided PH with notice of this filing as well as express notice of the Plaintiff’s assertion of its ownership rights thereto.

10. On 01/28/2004, the Plaintiffs filed suit against PH in the County of Summit, State of Ohio [See Case #2004-01-0545] alleging various causes of action, including, but not limited to, the misappropriation of the “Performance Stainless” trade dress by Parker Hannifin.

11. Shortly thereafter, Parker Hannifin was served with the pleading in Case #2004-01-0545 and successfully sought removal of this lawsuit to a different jurisdiction. The case was subsequently refiled in the County of Mahoning, State of Ohio, pursuant to judicial instruction on 08/04/2005 [See Case #05-CV-1539].

12. At all times subsequent to 01/28/2004, the Plaintiffs [and counsel therefor] dealt with Attorney Christopher Hunter, who is employed in the legal department at PH. Attorney Hunter had express knowledge of the nature of all of Plaintiff’s claims, including, but not limited to, the Plaintiff’s assertion of ownership rights to the “Performance Stainless” name, logo and trade

dress. Aside from having been served with the complaint filed 01/28/2004, Attorney Hunter scheduled a meeting with Creatore in early May of 2004, wherein Creatore made numerous assertions of his ownership of the Performance Stainless trade name, logo and trade dress.

13. In the original filing for the Trademark of “Performance Stainless” made by PH on 07/07/2005, Thomas A. Piraino, Vice President and Secretary of PH, submitted a patently false statement to the PTO when Mr. Piraino testified therein at page 3 that “to the best of his knowledge and belief no other person, firm, corporation or association has the right to use such mark in commerce, either in identical form or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his own knowledge are true and all statements made on information and belief are believed to be true.

14. In subsequent filings with the PTO regarding correspondence associated with the review of the application for Trademark Filing Serial #76642100, Attorney Hunter knowingly and purposely submitted patently false statements when represents that no other person, firm, corporation or association has the right to use such mark in commerce, either in identical form or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive.

15. The party moving in opposition to Trademark Filing Serial #76642100 requests that the subject trademark application be denied to Parker Hannifin and awarded to the Plaintiffs.

16. Further, the party moving in opposition to Trademark Filing Serial #76642100 requests that appropriate sanctions and penalties [including, but not limited to, all penalties allowed pursuant to 18 U.S.C. 1001] be levied against Thomas A. Piraino, Christopher Hunter, Parker Hannifin Corporation, Parker Hannifin Intangibles, LLC., and/or any party acting on behalf of any of these parties.

200433802568

DATE	DOCUMENT ID	DESCRIPTION	FILING	EXPED	PENALTY	CERT	COPY
12/16/2004	200433802568	TRADE NAME/ORIGINAL FILING (PNO)	50.00	00	.00	.00	.00

Receipt

This is not a bill. Please do not remit payment.

WITSCHY & WITSCHY CO., LPA
300 NORTH CLEVELAND-MASSILLON ROAD
SUITE 104
AKRON, OH 44333

**STATE OF OHIO
CERTIFICATE**

Ohio Secretary of State, J. Kenneth Blackwell

1503681

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

PERFORMANCE STAINLESS

and, that said business records show the filing and recording of:

Document(s):

TRADE NAME/ORIGINAL FILING

Date of First Use: 01/01/2002

Expiration Date: 11/22/2009

Document No(s):

200433802568

HEVUN DIVERSIFIED CORPORATION
509 WEAVER MINE TRAIL
CHAPEL HILL, NC 27517



United States of America
State of Ohio
Office of the Secretary of State

Witness my hand and the seal of the
Secretary of State at Columbus, Ohio
this 22nd day of November, A.D.
2004.

J. Kenneth Blackwell
Ohio Secretary of State

MAHONING COUNTY, OHIO
AUG - 4 2005
CLERK OF COURT

IN THE COURT OF COMMON PLEAS
CIVIL DIVISION
MAHONING COUNTY, OHIO

PNH, INC.
P.O. Box 889
Canfield, Ohio 44406

AND

DIVERSIFIED PROCESS COMPONENTS, INC.
500 McClurg Road
Boardman, Ohio 44512

AND

HEVUN DIVERSIFIED CORPORATION
500 McClurg Road
Boardman, Ohio 44512

AND

RONALD M. CREATORE
c/o RODERICK LINTON LLP
1500 One Cascade Plaza
Akron, OH 44308

AND

U.S. SANITARY CORPORATION, nka
CSSU
P.O. Box 889
Canfield, Ohio 44406

Plaintiffs

vs.

CASE NO. 05 CV 1539

JUDGE DURKIN

PLAINTIFF'S AMENDED
COMPLAINT
TYPE:
INTERFERENCE WITH
CONTRACT;
MISAPPROPRIATION OF
TRADE SECRETS;
UNJUST ENRICHMENT;
USURPATION; UNFAIR
COMPETITION; INJUNCTION

JURY DEMAND

PARKER HANNIFIN CORPORATION,
C/O CT Corporation, Statutory Agent
1300 East 9th Street
Cleveland, Ohio 44114

Defendant

Plaintiffs, PNH, Inc., HEVUN Diversified Corporation, Diversified Process Components, Inc., Ronald M. Creatore and U.S. Sanitary Corporation, nka CSSU, for their Complaint against Parker Hannifin Corporation, state as follows:

1. Plaintiff PNH, Inc. (hereinafter "PNH"), is an Ohio corporation in good standing.
2. Plaintiff HEVUN Diversified Corporation (hereinafter, "HDC") is an Ohio corporation in good standing.
3. Plaintiff Diversified Process Components, Inc. (hereinafter "DPC") is an Ohio corporation in good standing.
4. Plaintiff Ronald M. Creatore (hereinafter "Creatore") is the Trustee of the Ronald M. Creatore Living Trust U/A dated October 20, 1994 (hereinafter, the "Trust").
5. Plaintiff U.S. Sanitary Corporation ("USSC") is an Ohio Corporation in good standing.
6. Defendant Parker-Hannifin Corporation ("Parker") is an Ohio Corporation in good standing. Parker's principal place of business is located in Cuyahoga County.
7. Girton Oakes & Burger, Inc. ("GO&B"), was an entity formed by a merger of two of the oldest companies in the sanitary processing industry. GO&B was originally founded in 1873, incorporated in 1993, and was engaged in the business of distributing equipment, components (such as stainless steel fittings and valves) and repair parts to producers of food, dairy, beverage and pharmaceutical products.

8. By mid-2000, Creatore negotiated a purchase price for the acquisition of all of the outstanding common stock of GO&B on behalf of an investment group (which was ultimately formalized by the formation of USSC), the ownership of which was comprised of Creatore, William Sayavich and David Barnitt.

9. USSC funded its purchase of the common stock of GO&B primarily through two (2) loans provided by Provident Bank—a "Term" loan of \$250,000.00 and a "Revolver" loan of up to \$2,000,000.00 (hereinafter, collectively, the "Loan").

10. Provident Bank required that each of the individual owners of USSC, nka CSSU personally guaranty the payment of the Loan (jointly and severally) in an aggregate amount of up to \$725,000.00 (the "Personal Guaranty"), as well as requiring that the individual owners of USSC nka CSSU pledge their stock certificates and all rights associated thereunder (the "Stock Pledge") to Provident Bank.

11. Negotiations ensued between the members of the investment group and a series of concessions were made by each of the individuals in order to enable the transaction to be consummated. Creatore agreed that he would personally guaranty the Loan, thereby pledging his existing personal assets. Sayavich and Barnitt also agreed to guaranty the Loan, but their commitment had little to no practical value due to the fact that their personal assets were encumbered to the extent that they had little in the way of unpledged assets available to satisfy the Personal Guaranty was executed upon.

12. The key consideration for Creatore in exchange for taking the majority of the financial risk when the Loan was granted was the execution of business protection covenants by Sayavich and Barnitt. The BPC were intended to preclude Sayavich and Barnitt from competing in the same markets as GO&B or USSC and to preclude Sayavich and Barnitt from using or

improperly disclosing confidential business information gained under GO&B or USSC.

13. After agreeing on key points of consideration and forming USSC, Barnitt, Sayavich and Creatore planned on utilizing the GO&B acquisition as a springboard for a series of anticipated vertical add-on acquisitions, all of which were to be managed by Creatore.

14. USSC was incorporated in Ohio on or about November 11, 2000 and the initial stockholders consisted of Creatore (originally 49% ownership--later increasing to 52%), William Sayavich (originally 33% ownership--later reducing to 30%) and David Barnitt (18%).

15. On or about January 2, 2001, Sayavich entered into an employment agreement with GO&B. A copy of the Sayavich employment agreement is attached as Ex. 1. Paragraph 6 of this employment agreement precludes Sayavich from disclosing confidential business information of GO&B and from competing with GO&B or its assigns. (PNH is the assignee of these contractual obligations of Sayavich pursuant to an Order from the Sixth Circuit Court of Appeals. (See Ex. 4)

16. On or about January 2, 2001 Creatore, Sayavich, Barnitt and USSC executed a Close Corporation Agreement ("CCA") and various other agreements, all for the benefit of one another. Paragraph 11 of the CCA contains business protection covenants similar to those contained in Sayavich's employment agreement with GO&B and a consulting agreement with USSC.

A copy of the CCA is attached as Ex. 2. A copy of the consulting agreement is attached as Ex. 3.

17. Financial problems arose in 2002 resulting in a demand for an increase in invested capital by Provident Bank. Sayavich reneged on his promise to contribute his pro-rata share of the additional capital that was demanded, and Creatore (in order to prevent foreclosure of the Loan) agreed to post Sayavich's share of the necessary funds with one of the stipulated conditions being

that Sayavich had to assign sell his voting rights in GO&B and USSC to Creatore.

18. On or about February 13, 2003, Provident Bank notified GO&B, USSC, Barnitt, Sayavich and Creatore that the Loan was in default and that foreclosure was inevitable unless the parties agreed to a Forbearance Agreement offered by Provident Bank.

19. On or about February 28, 2003, Barnitt's consulting agreement with USSC was terminated for cause after Barnitt had already agreed, and then refused, to resign of his own accord.

20. On or about March 4, 2003, Sayavich's services with USSC and GO&B were also terminated for cause.

21. Both Barnitt and Sayavich refused to acquiesce to the Forbearance Agreement, and on April 9, 2003, Provident Bank demanded that either Barnitt, Sayavich and/or Creatore purchase the Loan at face value, or the Loan would be foreclosed upon and the Personal Guaranty executed upon.

22. On or about April 23, 2003, PNH purchased the Loan and all associated rights.

23. Barnitt's voting rights in GO&B and USSC were rescinded pursuant to the Pledge Agreement. Thus, subsequent to April 23, 2003, Creatore and PNH held 100% of the voting rights in USSC and GO&B.

24. Also on or about April 23, 2003, (pursuant to the joint efforts of Sayavich and Barnitt) creditors of GO&B filed an involuntary bankruptcy petition GO&B in the Federal Bankruptcy Court, Northern District of Ohio.

25. Subsequently, the Bankruptcy Court approved a settlement between the Trustee of the GO&B estate, PNH, Creatore and other affiliated entities, whereby all intangible property rights of GO&B were assigned to PNH, Inc. and its assigns. This included any rights associated with the trade name "Stainless Performance". This also included the rights to preclude Sayavich from

disclosing confidential information of GO&B or from competing with GO&B or its assigns, namely PNH. (On June 22, 2005, the Sixth Circuit Court of Appeals, Bankruptcy Appellate Panel, held that the Sayavich employment agreement and the rights to enforce the business protection covenants of GO&B were assigned to PNH, Inc. and its assigns.) See Ex. 4.

26. The trade name "Performance Stainless" was registered with the Ohio Secretary of State by HDC and Plaintiffs have the exclusive rights to utilize this name.

27. On or about May 1, 2003, the CCA for USSC was modified to permit the transfer of USSC's contract rights to Creatore, HEVUN and/or DPC.

28. USSC, transferred and properly assigned all of its intangible property rights exclusively to HEVUN, DPC and Creatore, including, but not limited to, the right to enforce the BPC restrictions granted in favor of USSC by Sayavich and Barnitt pursuant to paragraph 11 of the CCA, and pursuant to the Consulting Agreements executed by and between USSC and Sayavich, as well as USSC and Barnitt.

29. USSC has been named as a party-Plaintiff in this action as the assignee Plaintiffs (including HEVUN, DPC and Creatore) anticipate that Defendant will challenge the validity of the assignment.

30. Unbeknownst to Creatore, in 2002, a year prior to GO&B being forced into bankruptcy, Barnitt and Sayavich secretly commenced efforts to set up a competing entity to usurp the most profitable product line of GO&B and USSC, known as Buy.PEP.com.

31. Upon information and belief, as far back as early 2002, Sayavich improperly disclosed confidential business information now owned by Plaintiffs, to various third parties, including Parker, for the purposes of forming a competing company. These actions were in direct violation of paragraph 6 of the Sayavich employment agreement, paragraphs 6 of the Sayavich

consulting agreement and paragraph 11 of the CCA.

32. Between June and September of 2003, Parker met with Sayavich and solicited Sayavich to disclose proprietary information.

33. On or about September 1, 2003, Parker hired Sayavich for the sole purpose of gaining access to the remainder of any proprietary information not already disclosed thereto by Sayavich, including, but not limited to, trade secret information necessary to unfairly compete with Plaintiffs.

34. Parker had actual or constructive knowledge that certain agents, vendors and suppliers were either under contract to provide exclusive services to Plaintiffs, or that the identity of the agents, vendors or suppliers were protected by contract and/or statutory provisions, including the Trade Secret Act and other statutory provisions.

35. Notwithstanding this knowledge, Parker has solicited and utilized these agents, vendors and suppliers to provide the same or similar services for Parker in direct violation of contractual and statutory protections.

36. Parker also had actual or constructive knowledge that certain agents, vendors and suppliers were under contract to refrain from utilizing confidential, proprietary and copyright information and property owned by HDC/DPC for the benefit of any third party. Notwithstanding this knowledge, Parker has solicited these agents, vendors and suppliers to breach said contracts, including, but not limited to, causing Robert Palowitz and his graphic art design firm, Palo Creative, to utilize HDC/DPC's protected intangible property to prepare a catalog to be used to compete against HDC/DPC in the Sanitary Processing Industry.

Count One-Interference with Contract

37. Paragraphs 1 through 36 are incorporated as if fully rewritten herein.

38. On or about July 25, 2003, a Compromise Settlement Agreement between the Trustee of GO&B in bankruptcy (Mark Beatrice, Esq.) and PNH was approved by the Bankruptcy Court for the Northern District of Ohio, which effected the assignment to PNH of all intangible property owned by GO&B. This assignment included, but was not limited to, the assignment of GO&B's employment agreement with Sayavich and the "Performance Stainless" trade name and logo developed by GO&B in 2002. The issue of whether this compromise settlement included the assignment of business protection covenants contained in the Sayavich employment agreement precluding Sayavich from disclosing business information or competing with GO&B or its assignee, PNH, was resolved in favor of PNH, Inc., on June 22, 2005. See Ex. 4.

39. In the fall of 2003, Parker was notified of the fact that Sayavich's contractual obligations contained in the GO&B employment agreement, the USSC consulting agreement and the CCA were assigned to Plaintiffs. Notwithstanding, Parker proceeded to interfere with the contractual rights of the assignee Plaintiffs by soliciting Sayavich to disclose and utilize protected business information and by competing with Plaintiffs, the assigns of GO&B and USSC.

40. Parker's interference with the Sayavich employment agreement, the Sayavich consulting agreement and the CCA was intentional, was not privileged and caused damages to Plaintiffs in an amount to be proven at the time of trial.

41. Parker's actions were also wanton, willful and malicious entitling Plaintiffs to punitive damages.

Count Two-Interference with Contract

42. Paragraphs 1 through 41 are incorporated as if fully rewritten herein.

43. On or about May 15, 2002, HDC entered an exclusive consulting agreement with a citizen of the Peoples Republic of China, John Shi ("Shi"), whereby Shi agreed to provide

exclusive consulting and advisory services to HDC relating to exporting and importing products between the United States and China. The consulting agreement provides that Shi will not compete with HDC or any affiliate thereof, nor disclose information protected by the agreement or provide similar services to any competitor for a period of two (2) years after the termination of the agreement with HDC. A copy of the agreement with John Shi is attached as Ex. "5".

44. In or around September of 2003, Parker hired Sayavich for the sole purpose of gaining access to the confidential and proprietary information protected by the business protection covenants contained in GO&B employment agreement, the USSC consulting agreement and the CCA.

45. Subsequently, Parker, by and through its employee and agent Sayavich, solicited Shi to breach his consulting agreement with HDC.

46. Defendant Parker had knowledge of the contract between HDC and Shi, and notwithstanding this knowledge, intentionally interfered with this contract by soliciting Shi to provide the same services for PH that Shi was providing for the sole and exclusive benefit of HDC.

47. On or about August 14, 2003, HDC contracted with Robert Palowitz and Palo Creative, PLL (hereinafter collectively referred to as "Palowitz") for the exclusive rights to certain catalog design files. Pursuant to a written contract, Palowitz agreed to refrain from disclosing any of the information contained in the protected design files to any third party without the express written consent of HDC. (A copy of the agreement is attached as Ex. "6".)

48. In September of 2003, Parker, by and through its employee and agent Sayavich, solicited Palowitz to provide information protected by the agreement between Palowitz and HDC.

49. In December of 2004, Parker published a catalog referencing PNH's copyrights in the catalog which had been created almost solely from the duplicated design files owned by HDC,

which were to be protected pursuant to the contract between Palowitz and HDC.

50. Parker's actions in interfering with HDC's contract with Shi and Palowitz were intentional, were not privileged and caused damages to Plaintiffs in an amount to be proven at the time of trial.

51. PH's actions were also wanton, willful and malicious entitling Plaintiff to punitive damages.

Count Three-Misappropriation of Trade Secrets

52. Paragraphs 1 through 51 are incorporated as if fully rewritten herein.

53. The information unlawfully obtained by Parker through its agent and employee Sayavich, including but not limited to customer lists, vendor lists, contact information, pricing information, market information and technical information owned by HDC and Creatore (and entities affiliated therewith) included trade secrets.

54. Parker misappropriated this trade secret information when hiring Sayavich, knowing that the only reason to hire Sayavich was to improperly secure this trade secret information even though Parker knew that Sayavich was precluded from its disclosure by contract and various statutory provisions.

55. Parker's misappropriation occurred without Plaintiffs consent and was willful and malicious.

56. Parker's use of Plaintiffs trade secrets and confidential information was unauthorized and in violation of Ohio Revised Code §1333.61 through §1333.64.

57. Plaintiffs have suffered actual damages from loss of profits, both current and prospective, loss of goodwill, and other damages as a result of Parker's misappropriation of trade secrets and confidential information. Plaintiffs are entitled to injunctive relief pursuant to ORC

§1333.62.

58. Parker's actions were also wanton, willful and malicious entitling Plaintiffs to punitive and exemplary damages pursuant to ORC §1333.63.

Count Four-Unjust Enrichment

59. Paragraphs 1 through 58 are incorporated as if fully rewritten herein.

60. A benefit was conferred upon Parker by Plaintiffs as Plaintiffs developed proprietary information through substantial cost and utilization of extensive resources from January of 2001 through 2003.

61. Parker knew (or should have known) of the benefit of this information, if not sooner, by October of 2003, when Sayavich disclosed to Parker that Plaintiffs possessed a claim to the exclusive right of possession, benefit and entitlement to this information. Notwithstanding the above, Defendant retained the benefit of this information by launching its Performance Stainless product line in the spring of 2004.

62. It would be unjust for Parker to reap the financial benefits from the sale of the Performance Stainless product line.

63. Plaintiffs are entitled to damages in an amount equal to the benefit conferred upon Defendant.

Count Five-Usurpation of Corporate Opportunity

64. Paragraphs 1 through 63 are incorporated as if fully rewritten herein.

65. The private label product line, BuyPEP.com, was developed at the considerable expense and with the use of extensive resources of and by GO&B and USSC in 2002. The "Performance Stainless" name and logo was also developed at the considerable expense and with the use of extensive resources paid for or owned by GO&B and USSC, as well as pursuant to

numerous contractual protections negotiated in favor of GO&B and USSC.

66. The opportunities associated with this product line and the name "Performance Stainless" were wrongfully taken from Plaintiff's by Defendant.

67. Parker willfully, wantonly, intentionally, and maliciously usurped existing and future opportunities from Plaintiffs in conscious disregard of their legally-protected rights and interests.

68. Plaintiffs are entitled to compensatory damages because Parker's conduct denied Plaintiffs of the benefits of such business opportunities, and have caused Plaintiffs actual damages, including, but not limited to, loss of profits, both current and prospective, and increased expenditures associated with efforts that the Plaintiffs must take to protect the value of their intangible assets.

69. Plaintiffs are also entitled to an award of punitive damages for Parker's wanton, willful, and malicious conduct.

Count Six-Unfair Competition and Deceptive Trade Practices

70. Paragraphs 1 through 69 are incorporated as if fully rewritten herein.

71. Parker's conduct constitutes Deceptive Trade Practices as defined pursuant to Ohio Revised Code §4165.02 (A) and (B).

72. Defendants' conduct also constitutes Unfair and Deceptive Trade Practices under common law.

73. As a result of Defendants' conduct, Plaintiffs are entitled to damages in an amount to be determined at trial.

74. Plaintiffs are further entitled to injunctive relief pursuant to Ohio Revised Code §4165.03.

Count Seven-Injunctive Relief

75. Paragraphs 1 through 74 are incorporated as if fully rewritten herein.

76. Plaintiffs will be irreparably harmed absent injunctive relief.

77. Plaintiffs are entitled to injunctive relief pursuant to Ohio Revised Code §1333.62 and §4165.03.

78. Plaintiffs' are also entitled to Injunctive relief as their remedies at law are inadequate.

79. Plaintiffs' are entitled to temporary, preliminary and permanent injunctive relief pursuant to which Defendant Parker Hannifin Corporation is restrained and enjoined from engaging in any activities which constitute an interference with the agreement between HDC and Shi.

80. Plaintiffs' are entitled to temporary, preliminary and permanent injunctive relief pursuant to which Defendant Parker Hannifin Corporation is restrained and enjoined from engaging in any activities which constitute an interference with the agreement between HDC and Palowitz.

81. Plaintiffs' are entitled to temporary, preliminary and permanent injunctive relief pursuant to which Defendant Parker Hannifin Corporation is restrained and enjoined from engaging in any activities (i) which constitute an interference with the compromise settlement agreement between the Bankruptcy Trustee and PNH, the CCA or the Sayavich consulting agreement, all of which contain business protection covenants which refrain Sayavich from disclosing proprietary business information of GO&B and USSC and from competing with GO&B and USSC.

Wherefore Plaintiffs' pray for judgment as follows:

a) That on all counts, Plaintiffs be awarded compensatory damages against Parker Hannifin Corporation in an amount to be proven at the time of trial.

b) That on counts one through seven, Plaintiffs be awarded punitive, exemplary and treble damages in an amount to be determined at the time of trial.

c) That on counts three, six and seven, Plaintiffs be awarded injunctive relief against Parker Hannifin Corporation precluding Defendant from utilizing Plaintiff's trade names and trade marks and from conducting business with Plaintiff's customers, vendors, suppliers and other business contacts obtained through unlawful means.

d) That on counts three and six, Plaintiffs be awarded reasonable attorney fees.

e) That on count seven, Plaintiffs be entitled to injunctive relief.

f) For all other relief that the Court deems equitable and just;

Respectfully submitted,



TIMOTHY J. TRUBY (#0023370)

DAVID S. NICHOL (#0072194)

RODERICK LINTON LLP

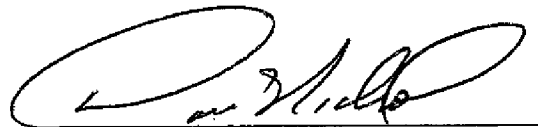
1500 One Cascade Plaza

Akron, OH 44308

330-434-3000

JURY DEMAND

A trial by jury is demanded on all counts herein.



Attorney for Plaintiff

DIANA ZALESKI

2004 JAN 28 PM 1:13

SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
CIVIL DIVISION
SUMMIT COUNTY, OHIO

2004-01-0545

PNH, INC. an Ohio Corporation)
P.O. Box 889)
Canfield, Ohio 44406)

CASE NO.

JUDGE

~~ASSIGNED TO JUDGE SPICER~~

AND)

DIVERSIFIED PROCESS COMPONENTS, INC.)
500 McClurg Road)
Boardman, Ohio 44512)

COMPLAINT

AND)

TYPE:

INTERFERENCE WITH

HEVUN DIVERSIFIED CORPORATION)
3855 Leffingwell Road)
Canfield, Ohio 44406)

CONTRACT;

MISAPPROPRIATION OF

TRADE SECRETS;

INJUNCTION

AND)

RONALD M. CREATORE)
40 Squires Court)
Canfield, Ohio)

FIRST SET OF

INTERROGATORIES AND

REQUESTS FOR

PRODUCTION OF

DOCUMENTS

Plaintiffs)

vs.)

INSTRUCTIONS TO

CLERK

PARKER HANNIFIN, an Ohio Corporation)
C/O CT Corporation, Statutory Agent)
1300 East 9th Street)
Cleveland, Ohio 44114)

JURY DEMAND

Defendant)

Plaintiffs, PNH, Inc., HEVUN Diversified Corporation, Diversified Process Components,

assisting in raising capital to purchase GO&B. Barnitt agreed and also expressed an interest in being a minority owner.

10. Barnitt offered to handle financing negotiations and financing structure, as well as acting as the CFO of GO&B, if he were allowed to participate in the ownership of the equity necessary to complete any potential acquisition transaction.

11. By mid-2000, Creatore negotiated a purchase price for the acquisition of GO&B. At that time, Barnitt circulated a memorandum to potential financing sources, including investment banks, commercial banks, private equity funds and private individuals, to ascertain any interest that these parties may have had in financing the acquisition of the GO&B stock by Creatore, Sayavich and Barnitt.

12. Creatore, Sayavich and Barnitt had agreed in advance that any capital commitment obtained by Barnitt would not include personal guarantees from the individual investors. All parties acknowledged that Creatore was the only party that had significant assets to invest and the net worth to satisfy the level of indebtedness that was necessary to complete the transaction.

13. After several months, Barnitt was unsuccessful at securing financing without any personal guaranty. Provident Bank was the only lender that expressed an interest in financing the transaction, however, the terms proposed by Provident Bank included a personal guaranty of \$725,000.00 from each individual in the investment group.

14. Creatore, being the only individual within the investment group with the liquid assets and net worth adequate to satisfy any potential personal guarantee initially rejected the proposal.

15. However, extensive negotiations ensued between the members of the investment group and a series of concessions were made by each party. Creatore agreed that he would

personally guaranty the loan, thereby pledging his existing personal assets. Sayavich and Barnitt agreed to also execute personal guarantees (which had little to no practical value) and more importantly to execute a series of agreements protecting Creatore from any threat of Barnitt or Sayavich from competing with GO&B or using GO&B's confidential proprietary business information to compete after Creatore extended the financial risk necessary to close the transaction for the benefit of all.

16. The terms were memorialized within the shareholder agreements, consulting/employment agreements and side-letter agreements executed by and between Barnitt, Sayavich and Creatore.

17. With an agreement on various key points of consideration, the members of the investment group caused the formation of a holding company, U. S. Sanitary Corporation [hereinafter, "USSC"], which was to be used for the GO&B acquisition and a series of anticipated vertical add-on acquisitions, all of which were to be managed by Creatore.

18. USSC was incorporated in Ohio on or about November 11, 2000 and the initial stockholders in USSC consisted of Creatore [who originally subscribed to and owned 49%, and later increased to 52%, of the outstanding common stock of USSC], William Sayavich [who originally subscribed to and owned 33%, and later reduced to 30%, of the outstanding common stock of USSC] and David Barnitt [who subscribed to and owned 18% of the outstanding common stock of USSC].

19. On or about November 28, 2000, The Provident Bank [hereinafter, "Provident"] agreed to loan USSC Two Hundred and Fifty Thousand Dollars [\$250,000.00] in the form of a five [5] year "Term Loan", and up to Two Million Dollars [\$2,000,000.00] in the form of an asset-based "Revolver Loan".

20. Provident would not agree to the Term Loan or the Revolver Loan until Creatore provided a financial statement confirming that he, as the sole principal of USSC that had the financial wherewithal to justify the risk being incurred by Provident, had adequate assets available for Provident in the event that the Personal Payment Guaranty of each guarantor had to be executed upon.

21. On or about January 2, 2001 Creatore, Sayavich and Barnitt, as well as USSC, executed a Close Corporation Agreement [the "CCA"] and various other agreements, all for the benefit of one another. Paragraph 11 of the CCA contains business protection covenants relevant to this complaint.

22. On or about January 4, 2001, Provident, Barnitt, Sayavich and Creatore executed the various agreements required for the Term Loan and Revolver Loan [hereinafter, collectively, the "Loan Documents"].

23. On or about January 8, 2001, Provident funded the Term Loan and the Revolver Loan, thus enabling USSC to purchase one hundred percent [100%] of the common stock of GO&B.

24. Subsequent to the purchase of GO&B by USSC, Barnitt, as CFO on behalf of USSC, systematically executed a borrowing base certificate [hereinafter, the "BBC"] showing what purported to be the stated book value and/or fair market value of the various assets owned by both USSC and GO&B, all of which served as the assets pledged to Provident as security for the basis for the amount of the "Revolver Loan" extended by Provident.

25. The BBC required USSC to provide accurate accounting information and to satisfy certain financial covenants in order to justify the continuance of the Revolver Loan needed by USSC and GO&B to enable those entities to operate as going concerns.

26. Subsequently, Barnitt and Sayavich overstated the income of USSC/GO&B on the BBC given to Provident by listing an invoice for One Hundred Thousand Dollars [\$100,000.00] on the BBC for a customer order for Ben Venue Laboratories, which was not to ship for seven [7] weeks subsequent thereto.

27. Subsequently, Barnitt and Sayavich understated the costs of goods sold of GO&B on the financial statements given to Provident by instructing GO&B staff to forgo applying cost of approximately Thirteen Thousand Dollars [\$13,000.00] against a customer order for Ben Venue Laboratories.

28. Subsequently, Barnitt overstated the BBC reported to Provident by approximately One Hundred and Fifty Thousand Dollars [\$150,000.00], by purposely failing to properly report certain Ineligible Accounts Receivable.

29. Subsequently, Barnitt overstated the BBC reported to Provident by approximately One Hundred Sixty Thousand Dollars [\$160,000.00], by purposely failing to correct an error that Provident had made relative to the amount of cash collected against GO&B's accounts receivable.

30. Subsequently, Provident requested confirmation of an accounting, which understated GO&B's debts by One Hundred Sixty Thousand Dollars [\$160,000.00] and Barnitt failed to inform Provident of this accounting error.

31. On February 11, 2003, after Provident learned of the accounting improprieties committed by Barnitt and Sayavich, Provident notified USSC, GO&B and all guarantors of the default status. All parties were given five-calendar days to cure said default.

32. Barnitt and Sayavich failed to take any action to cure the default.

33. On or about February 19, 2003, USSC held a special meeting of the shareholders and directors whereby the voting rights of Sayavich were transferred to Creatore for consideration.

34. On or about February 28, 2003, Barnitt's services with USSC/GO&B were terminated due to Barnitt's commission of accounting fraud and the resulting financial problems at GO&B that were exasperated by Barnitt's accounting fraud and self-dealing.

35. On or about March 4, 2003, Sayavich's services with USSC/GO&B were terminated due to his commission of accounting fraud and the resulting financial problems at GO&B that were exasperated by Sayavich's accounting fraud and self-dealing.

36. Prior to foreclosing on its lien rights, Provident Bank offered an opportunity to Creatore, Barnitt and Sayavich to enter into a Note and Loan Document Sale Agreement with Provident, whereby any of these individuals could purchase the outstanding principal and accrued interest owed to Provident and receive all of the contracts and security agreements and associated rights of the Secured Lender. This included the right to the security of the cognovit payment guaranty and the transfer of shareholder voting rights.

37. Both Barnitt and Sayavich rejected this proposal leaving Creatore personally exposed on the guaranty of \$725,000.00.

38. In order to avoid a complete loss on his investment in GO&B and in order to avoid being sued on the personal guaranty, Creatore formed PNH to enter the Note and Loan Document Sale Agreement with Provident.

39. On or about April 23, 2003, PNH, Inc. [hereinafter, "PNH"] purchased the Term Loan and Revolver Loan from Provident for one hundred percent [100%] of the then-outstanding principal and interest balance, plus one hundred dollars [\$100.00].

40. On or about April 23, 2003, Barnitt's voting rights were vested in PNH pursuant to the Loan Documents. Subsequent to April 23, 2003, Creatore and PNH held 100% of the voting rights in USSC and GO&B.

41. Notwithstanding the fraudulent accounting practices committed by Sayavich and Barnitt which caused Provident to call its loans and necessitate the termination of their services, Sayavich and Barnitt retaliated by contacting creditors of GO&B soliciting their cooperation in filing a Chapter 7 bankruptcy petition against GO&B and USSC.

42. The sole motivation of Sayavich and Barnitt in having GO&B and USSC placed into bankruptcy arose out of their desire to use the Bankruptcy Court to shield against the enforcement of their obligations not to compete or disclose confidential and proprietary business information owned by GO&B, USSC or their assigns or successors.

43. Shortly after PNH purchased the Term Loan and Revolver Loan from Provident a Chapter 7 Involuntary Bankruptcy Petition was filed against GO&B in the Northern District Federal Bankruptcy Court by three general creditors who had been contacted by Sayavich and Barnitt. USSC was not named as a debtor in the bankruptcy petition, and USSC remains in good standing. Furthermore, any intangible property of GO&B, including contract rights, was assigned to PNH through a settlement agreement confirmed by the Bankruptcy Court.

44. On or about May 1, 2003, the CCA was modified to permit the transfer of USSC's contract rights, (including the business protection covenants contained in paragraph 11 of the CCA), to Creatore, HEVUN and/or DPC.

45. USSC transferred and properly assigned all of its intangible property rights exclusively to HEVUN, DPC and Creatore for valuable consideration, including, but not limited to, the right to enforce the business protection covenants granted to USSC by Sayavich and Barnitt pursuant to the CCA and pursuant to the Consulting Agreements that Sayavich and Barnitt had entered into with USSC.

46. Unbeknownst to Creatore, in 2002, approximately one [1] year prior to the time that

USSC and GO&B defaulted on the Provident Loans and Barnitt and Sayavich were terminated for accounting fraud and financial problems, Barnitt and Sayavich engaged in self-dealing, including, but not limited to, having formed a company [known as Performance Stainless] for the purpose of directly competing with USSC and GO&B.

47. Upon information and belief, as far back as early 2002, Sayavich disclosed confidential business information now owned by Creatore, DPC and HDC, to various third parties, including, but not limited to PH, for purposes of forming a competing company in direct violation of paragraphs 11(A), 11(B) and 11(C) of the CCA, and in direct violation of the business protection covenants contained with Sayavich's Employment Agreement with GO&B and Sayavich's Consulting Agreement with USSC.

48. PH had knowledge that the business information provided by Sayavich and Barnitt was proprietary, confidential and protected by contract and statute, and notwithstanding this express and/or implicit knowledge, hired Sayavich for the sole purpose of gaining access to all of this proprietary information.

49. PH also had knowledge that certain agents, vendors and suppliers were under contract to provide services exclusively for Creatore and HDC/DPC to conduct business in the Sanitary Processing Industry. Notwithstanding this knowledge, PH has solicited these agents, vendors and suppliers, including, but not limited to, a Chinese national known as John Shi, to provide the same or similar services for PH in direct violation of their contracts with Creatore and HDC/DPC.

50. PH also had knowledge, or should have known that certain agents, vendors and suppliers were under contract to refrain from utilizing confidential, proprietary and copyright information and property owned by HDC/DPC to third parties. Notwithstanding this knowledge,

PH has solicited these agents, vendors and suppliers, including, but not limited to, Robert Palowitz and his graphic art design firm, Palo Creative, to utilize HDC/DPC's protected intangible property to prepare a catalog to be used to compete against HDC/DPC in the Sanitary Processing Industry.

Count One-Interference with Contract

51. Paragraphs 1 through 50 are incorporated as if fully rewritten herein.

52. On or about May 15, 2002, HDC entered an exclusive consulting agreement with a Chinese National, John Shi, whereby Shi agreed to provide consulting and advisory services to HDC relating to exporting and importing products between the United States and China. The consulting agreement provides that Shi will not compete with HDC, disclose information protected by the agreement or provide similar services to a competitor provided for pursuant to the agreement for a period of two year after the termination of the agreement with HDC.

53. In or around September of 2003, PH hired Sayavich for the sole purpose of gaining access to the confidential and proprietary information protected by the business protection covenants contained in Sayavich's consulting agreement and contained in the CCA signed by Sayavich.

54. Subsequently PH, by and through its employee and agent Sayavich, solicited Shi to breach his consulting agreement with HDC.

55. Defendant PH, had knowledge of the contract between HDC and Shi and notwithstanding this knowledge, intentional interfered with this contract by soliciting Shi to provide the same services for PH that Shi was providing for HDC.

56. On or about August 14, 2003, HDC contracted with Robert Palowitz and Palo Creative, PLL (hereinafter collectively referred to as "Palowitz") for the exclusive rights to certain catalog design files. Pursuant to the written contract, Palowitz agreed to refrain from disclosing

any of the information contained in the protected design files to any third party without the express written consent of HDC.

57. In October of 2003, PH, by and through its employee and agent, Sayavich, contacted Palowitz to solicit Palowitz to provide information protected by the agreement between Palowitz and HDC.

58. In January of 2004, PH published a catalog referencing PH's copyrights in the catalog including the duplication of design files protected by the contract between Palowitz and HDC.

59. PH's actions in interfering with HDC's contract with Shi and Palowitz were intentional, were not privileged and caused damages to Plaintiff in an amount to be proven at the time of trial.

60. PH's actions were also wanton, willful and malicious entitling Plaintiff to punitive damages.

Count Two-Interference with Contract

61. Paragraphs 1 through 60 are incorporated as if fully rewritten herein.

62. Sayavich and his agent and counsel communicated to PH that while employed by USSC and GO&B, Sayavich executed the CCA and an employment agreement precluding Sayavich from forming a competing business, working for a competitor or disclosing confidential and proprietary information to any competitor or third party.

63. Notwithstanding PH's knowledge of the contractual obligations of Sayavich, PH hired Sayavich for the sole purpose of gaining access to this protected information.

64. The contract rights, including the business protection covenants, formerly belonging to GO&B were assigned to PNH through the settlement agreement reached in the Federal

Bankruptcy Court.

65. The contract rights, including the business protection covenants, formerly belonging to USSC, were assigned to Creatore, HDC and DPC through various amendments to the CCA.

66. PH is actively and presently using the proprietary information unlawfully obtained from Sayavich to form a competing business with Plaintiffs.

67. PH's actions in interfering with the CCA and Sayavich's Employment Agreement were intentional, were not privileged and caused damages to Plaintiffs in an amount to be proven at the time of trial.

68. PH's actions were also wanton, willful and malicious entitling Plaintiffs to punitive damages.

Count Three-Misappropriation of Trade Secrets

69. Paragraphs 1 through 68 are incorporated as if fully rewritten herein.

70. The information unlawfully obtained by PH through its agent and employee Sayavich, including but not limited to customer lists, vendor lists, contact information, pricing information, market information and technical information included trade secrets.

71. PH misappropriated this trade secret information by hiring Sayavich, knowing that the only reason to hire Sayavich was to secure this trade secret information and knowing that Sayavich was contractually precluded from its disclosure.

72. PH's misappropriation occurred without Plaintiffs consent and was willful and malicious.

73. PH's use of Plaintiffs trade secrets and confidential information was unauthorized and in violation of Ohio Revised Code § 1333.61 through 1333.64.

74. Plaintiffs' have suffered actual damages from loss of profits, both current and

prospective, loss of goodwill, and other damages as a result of PH's misappropriation of trade secrets and confidential information.

75. PH's actions were also wanton, willful and malicious entitling Plaintiffs to punitive and exemplary damages pursuant to RC1333.63.

Count Four-Injunction

76. Paragraphs 1 through 75 are incorporated as if fully rewritten herein.

77. Plaintiffs will be irreparably harmed absent injunctive relief. Plaintiffs' remedies at law are inadequate.

78. Plaintiffs' are entitled to temporary, preliminary and permanent injunctive relief pursuant to which Defendant PH is restrained and enjoined from engaging in any activities which constitute an interference with the agreement between HDC and Shi.

79. Plaintiffs' are entitled to temporary, preliminary and permanent injunctive relief pursuant to which Defendant PH is restrained and enjoined from engaging in any activities which constitute an interference with the agreement between HDC and Palowitz.

80. Plaintiffs' are entitled to temporary, preliminary and permanent injunctive relief pursuant to which Defendant PH is restrained and enjoined from engaging in any activities which constitute an interference with the agreement between Sayavich and CCA, (including but not limited to the Business Protection Covenants contained in paragraph 11) and between Sayavich and GO&B/USSC (including the employment/consulting agreements).

Wherefore Plaintiffs' pray for judgment as follows:

a) That Plaintiffs' be awarded compensatory damages against Parker Hannifin in an amount to be proven at the time of trial.

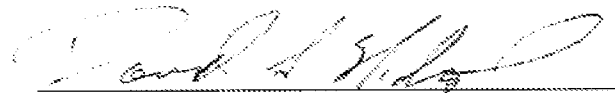
b) That Plaintiff be awarded punitive, exemplary and treble damages in an amount to be determined at the time of trial.

c) That Parker Hannifin be enjoined from soliciting agents, employees and representatives of Creatore, HEVUN Diversified and Diversified Process Corporation or otherwise interfering with contracts or business relations between Plaintiffs and their agents, employees and representatives.

d) That Parker Hannifin be enjoined from interfering with the CCA agreement and the consulting/employment agreements executed by Sayavich and that Parker Hannifin be enjoined from utilizing the confidential business information protected by those contracts.

e) For all other relief that the Court deems equitable and just;

Respectfully submitted,



TIMOTHY J. TRUBY (#0023370)

DAVID S. NICHOL (#0072194)

RODERICK LINTON LLP

1500 One Cascade Plaza

Akron, OH 44308

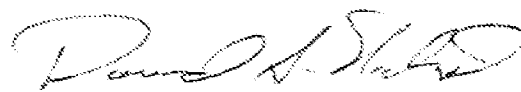
330-434-3000

JURY DEMAND

A trial by jury is demanded on all counts herein.

INSTRUCTIONS TO CLERK

Please serve a copy of the Summons and Complaint, along with Plaintiff's First Set of Interrogatories and Requests for Production attached hereto, upon Defendant Parker Hannifin Corporation at the address set forth in the caption by certified mail, return receipt requested.



Attorney for Plaintiff